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Preparatory Commission for the International Criminal Court
Working Group on the Assembly of States Parties
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Draft resolution of the Assembly of States Parties on the procedure for the nomination and election of judges, the Prosecutor and the Deputy Prosecutors of the International Criminal Court

Rolling text prepared by the Coordinator[1]

The Assembly of States Parties,

Bearing in mind the provisions of the Rome Statute of the International Criminal Court, in particular articles 36, 37, 42 and 43,

Mindful of the Rules of Procedure of the Assembly of States Parties,

Approves the following procedure for the nomination and election of judges, the Prosecutor and the Deputy Prosecutors of the International Criminal Court:

A
Nomination of candidates for judges

1. The Secretariat of the Assembly of States Parties shall issue the invitations for nominations of judges of the International Criminal Court.

2. States Parties shall nominate their candidates during the nomination period, which shall be fixed by the Bureau of the Assembly of States Parties.

3. Nominations submitted before or after the nomination period shall not be considered.

[1] On the basis of the discussion in the Working Group on the Assembly of States Parties Preparatory Documents, held at the ninth session of the Preparatory Commission for the International Criminal Court.

4. If at the end of the nomination period the number of candidates remains less than the number of seats, the President of the Assembly of States Parties may extend the nomination period.

5. States Parties to the Statute shall communicate nominations for the election of the judges of the International Criminal Court through diplomatic channels to the Secretariat of the Assembly of States Parties.

6. Every nomination should be accompanied by a statement:

(a) Specifying in the necessary detail how the candidate fulfils each of the requirements in subparagraphs (a), (b) and (c) of paragraph 3 of article 36 of the Statute;

(b) Indicating whether the candidate is being nominated for inclusion in list A or list B for the purposes of paragraph 5 of article 36 of the Statute;

(c) Containing information relating to subparagraphs (i) to (iii) of paragraph 8 (a) of article 36 of the Statute;

(d) Indicating whether the candidate has any expertise under paragraph 8 (b) of article 36 of the Statute;

(e) Indicating under which nationality the candidate is being nominated, for the purposes of paragraph 7 of article 36 of the Statute, where a candidate is a national of two or more States.

7. States that have started the process of ratification, accession or acceptance of the Statute may nominate candidates for the elections of judges to the International Criminal Court. Such nominations shall remain provisional and shall not be included in the list of candidates unless the State concerned has deposited its instrument of ratification, accession or acceptance with the Secretary-General of the United Nations before the end of the nomination period and provided that that State is a party to the Statute in accordance with paragraph 2 of article 126 of the Statute on the date of the election.

8. The Secretariat of the Assembly of States Parties shall place the nominations of candidates for judges, the accompanying statements referred to in article 36 of the Statute and other supporting documentation on the Internet web site of the International Criminal Court in any of the official languages of the Court, as soon as possible after receiving them.

9. The Secretariat of the Assembly of States Parties shall prepare a list in English alphabetical order of all persons thus nominated, with accompanying documents, and shall circulate it.

10. For the purposes of the first election of the judges of the International Criminal Court, the nominations shall open, by a decision of the Bureau, during the first meeting of the Assembly of States Parties and shall close on [1 November 2002].

B
Election of judges

11. The Bureau of the Assembly of States Parties shall fix the date of the election.

12. The Secretariat of the Assembly of States Parties shall prepare, in accordance with paragraph 5 of article 36 of the Statute, two lists of candidates in English alphabetical order.

13. The election of judges shall be a matter of substance, and subject to the requirements of paragraph 7 (a) of article 112 of the Statute.

14. The persons elected to the Court shall be those candidates who obtain the highest number of votes and a two thirds majority of States Parties present and voting, provided that an absolute majority of the States Parties constitutes the quorum for voting.

15. [In the event that not all 18 judges are elected in ..., subsequent balloting would be {restricted/unrestricted}.][2]

16. [In case the number of candidates eligible obtaining the required majority for the elections exceeds the number of seats so allocated thereunder, the candidates obtaining the highest number of votes to fill the number of seats so allocated shall be considered elected.][2]

17. [In the interest of a timely conclusion of the election, if after ... ballots not all ... judges are elected, balloting shall be suspended to give an opportunity to candidates or the nominating States to consider whether they wish to maintain their candidatures. Before such suspension, the President of the Assembly of States Parties will announce when balloting shall resume.][2]

18. In the event of a tie for a remaining seat, there shall be a restricted ballot limited to those candidates who have obtained an equal number of votes.

19. When two or more candidates of the same nationality obtain the required majority, the candidate who receives the higher number of votes shall be considered elected.

20. For the purpose of the first election, the President of the Assembly of States Parties shall draw lots, in accordance with paragraph 9 (b) of article 36 of the Statute.

C
Judicial vacancies

21. In the event of a judicial vacancy, the same procedures for the election of judges shall apply mutatis mutandis.

22. The Secretariat of the Assembly of States Parties shall issue invitations for nominations within one month of the occurrence of a judicial vacancy.

D
Nomination of candidates for the Prosecutor

23. The procedures for the nomination of candidates for judges shall apply mutatis mutandis to the nomination of the Prosecutor.

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[2] The election procedure is still subject to further discussion regarding a specific procedure for paragraphs 5, 6 and 8 of article 36 of the Statute. See also the annex to the present document.

[24. Nominations for the post of the Prosecutor should preferably be made with the support of multiple States Parties.][3]

25. Each nomination should be accompanied by a statement specifying in the necessary detail how the candidate fulfils the requirements of paragraph 3 of article 42 of the Statute.

E
Election of the Prosecutor

26. The Bureau of the Assembly of States Parties shall fix the date of the election.

27. The Secretariat of the Assembly of States Parties shall prepare a list of candidates in English alphabetical order.

28. Every effort shall be made to elect the Prosecutor by consensus.

29. In the absence of consensus, the Prosecutor shall be elected, in accordance with paragraph 4 of article 42 of the Statute, by secret ballot by an absolute majority of the members of the Assembly of States Parties.

30. In the event of more than one candidate obtaining the required majority for election, the candidate with the highest number of votes shall be considered elected.

31. In the event of a tie, there shall be a restricted ballot limited to those candidates who have obtained an equal number of votes.

32. In the interest of a timely conclusion of the election, if after [three] ballots no candidate has obtained the required majority, the balloting shall be suspended to give an opportunity for any withdrawal of candidatures. Before such suspension, the President of the Assembly of States Parties will announce when balloting shall resume.

F
Nomination of the Deputy Prosecutors

33. The Prosecutor shall nominate three candidates for each position of the Deputy Prosecutor to be filled, in accordance with paragraph 4 of article 42 of the Statute.

34. For each nomination, the Prosecutor should include a statement specifying in the necessary detail how the candidate fulfils the requirements of paragraph 3 of article 42 of the Statute.

35. In proposing the list of candidates, the Prosecutor should bear in mind, in accordance with paragraph 2 of article 42, that the Prosecutor and the Deputy Prosecutors should be of different nationalities.

36. The Secretariat of the Assembly of States Parties shall prepare a list in English alphabetical order of all persons thus nominated, with accompanying documents, and shall circulate it.

[3] Subject to further discussion.

G

Election of the Deputy Prosecutors

37. The procedures for the election of candidates for the Prosecutor in section E shall apply mutatis mutandis to the election of any Deputy Prosecutor.

38. In case of an election for more than one position for the post of Deputy Prosecutor:

(a) The persons elected to the post of Deputy Prosecutor shall be those candidates who obtain the highest number of votes and an absolute majority of the members of the Assembly of States Parties;

(b) If the number of candidates eligible obtaining the required majority for the elections exceeds the number of positions for Deputy Prosecutor so allocated thereunder, the candidates obtaining the highest number of votes to fill the number of seats so allocated shall be considered elected.

Annex

Proposed procedure for the first election of the judges to the International Criminal Court

1. The first election of judges will consist of two phases:

   • Fourteen judges will be elected during the first phase in accordance with article 36, paragraph 5. The four remaining seats will be filled during the second phase.

First phase

2. Each State Party may vote for 14 candidates at the same time: 9 from list A, and 5 from list B.

3. Nine candidates will be elected from list A, and five from list B, each having obtained the highest number of votes and a two-thirds majority.

4. If more than nine candidates from list A or more than five from list B obtain a two-thirds majority, those having obtained the highest number of votes in each list will be elected.

5. If fewer than nine candidates from list A or fewer than five from list B are elected, successive ballots will be held for the list for which sufficient candidates have not been elected until 14 seats are filled. If the required number is not obtained in both lists, the additional ballots will be organized for each list at the same time. Those having obtained the highest number of votes and a two-thirds majority will be elected.

Second phase

6. The second phase will take place at least 24 hours after the closure of the first phase.

7. Each State Party may vote for four remaining candidates, regardless of the list on which they appear.

8. The four candidates having obtained the highest number of votes and a two-thirds majority will be elected.

9. If more than four candidates obtain a two-thirds majority, those having obtained the highest number of votes will be elected.

10. If fewer than four candidates are elected, successive ballots will be held for the remaining seats. Those having obtained the highest number of votes and a two-thirds majority are elected.

11. For subsequent elections, an adequate procedure will be established.